

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is made this ____ day of _____, 2007, by the LOUISVILLE RENAISSANCE ZONE CORPORATION, a Kentucky non-profit corporation, having an address at _____ (“**Grantor**”), in favor of LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, a consolidated local government, having an address at 527 W. Jefferson Street, Louisville, Kentucky 40202 (“**Grantee**”).

RECITALS:

A. Grantor is the sole owner in fee simple of certain real property in Jefferson County, Kentucky, more particularly described in the legal description attached hereto as Exhibit A hereto, and shown on the plat attached hereto as Exhibit B hereto, both of which are incorporated herein by this reference (the “**Property**”) For the purposes of clarification, Exhibit B is a copy of the platted map recorded with that certain “Instrument to Record Minor Plat” dated September 20, 2007 and recorded at Deed Book 9109, Page 352 (the “**Minor Plat**”) in the office of the Clerk of Jefferson County.

B. The Property consists, in part, of a jurisdictional wetland and certain wetland and floodplain mitigation areas (collectively, the “**Conservation Area**”). In particular, the Property and its Conservation Area represent significant emergent, scrub-shrub, and bottomland hardwood forest wetland habitat in the Pond Creek watershed in southern Jefferson County. Such values related to the Property’s natural, scenic, wetland and open-space characteristics are hereinafter collectively referred to as the “**Conservation Values**,” which are of great importance to Grantor, Grantees, the people of Louisville Metro, Kentucky and the people of the Commonwealth of Kentucky.

C. The Property is subject to terms and provisions of that certain Department of Army Permit No. 200600179, dated February 16, 2007 (the “**Wetlands Permit**”) which also calls for the grant of a conservation easement over the Property. Pursuant to the Wetlands Permit, the Property is to be permanently restricted by means of a conservation easement and Grantee has agreed to act as holder of the conservation easement as proposed in the Wetlands Permit.

D. On or before the date hereof, Grantor has provided to Grantee a copy of Grantor’s “Final Mitigation Plan – Renaissance Zone South – Phase I – Jefferson County, Kentucky – Redwing Project 05-117 – USACE ID No. 200600179 – KDOW AI No. 81621” dated October 5, 2007 (the “**Mitigation Plan**”), submitted to the U.S. Army Corps of Engineers (“USACE”) in connection with the Wetland Permit. Grantor and Grantee acknowledge that the Mitigation Plan includes such information as the boundary of the Property, and the boundary of the existing wetlands located on the Property.

E. Grantee is authorized to accept conservation easements as required to retain and protect natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest or open-space use, protecting natural resources, and to preserve the historical, architectural, archaeological, or cultural aspects of real property in Kentucky under KRS 382.800 through 382.860.

F. The grant of a conservation easement on the Property by Grantor to Grantee shall assure that the Conservation Values of the Property will be conserved and maintained.

G. The grant of a conservation easement on the Property will serve the clearly delineated governmental policies of Kentucky Revised Statutes 382.800 *et seq.* to retain or protect “natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use” and for “protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.”

H. The preservation of the Conservation Values of the Property will assist in the accomplishment of the Cornerstone 2020 Comprehensive Plan, adopted and approved by Louisville and Jefferson County Planning Commission on June 15, 2000, all of which are of great importance to Grantor, Grantee, the people of Jefferson County, Kentucky and the people of the Commonwealth of Kentucky in that it will, among other things:

- (a) Minimize the impact of changing land use on natural features and ecosystems;
- (b) Protect, to the extent possible, wildlife sanctuaries, wetlands, major forested areas, nature preserves, publicly owned parks, unique natural areas and other areas with significant landscape features;
- (c) Identify and preserve riparian corridors and woodlands;
- (d) Preserve and enhance significant habitat for wildlife species; [and]
- (e) Adopt a management philosophy that encourages natural resource stewardship; and develop and implement appropriate regulatory and non-regulatory mechanisms and design standards to protect important scenic and historic resources and visual quality of life.

I. By Resolution Docket 22-2006-02, Series 2007, the Louisville/Jefferson County Metro Government through its legislative body, the Metro Council, authorized the Mayor to accept this Conservation Easement on behalf of the Metro Government.

J. The specific Conservation Values of the Property are documented in an inventory of relevant features of the Property, of even date herewith, a complete copy of which is on file in Docket No. 22-2006-02 at the offices of Louisville Metro Planning and Design Services, and a

duplicate copy is located in the Louisville Metro Office of Historic Preservation and Archives, consisting of reports, maps, photographs, and other documentation (the “**Baseline Documentation**”), that the parties agree provide, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of this grant, all of which is incorporated herein by this reference.

K. Grantor intends the Conservation Values of the Property to be preserved and maintained by this Easement, in perpetuity, and that the continuation of land use patterns of the Property, existing at the time of this Easement and so identified in the Baseline Documentation shall not be permitted to impair or interfere with those values;

L. Grantor desires to grant to Grantee, and Grantee desires to accept from Grantor, a conservation easement on the Property, pursuant to the Kentucky Revised Statutes Sections 382.800 through 382.860 and the terms of this Easement;

M. Grantee agrees by accepting this Easement, that Grantee shall endeavor to honor the intentions of Grantor stated herein and endeavor to preserve and protect in perpetuity the Conservation Values of the Property from soil erosion and other human-induced disturbance for the benefit of this generation and future generations.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, pursuant to the Wetlands Permit, and the laws of the Commonwealth of Kentucky, and in particular KRS 382.800 et seq., Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property, together with all unreserved development rights associated with the Property, of the nature and character and to the extent hereinafter set forth (this “**Easement**”); provided, however, that Grantee’s rights under this Easement are made subject and subordinate to all existing easements, restrictions and stipulations of record.

1. Purpose. It is the purpose of this Easement to assure that the Property will be retained forever in its existing predominantly emergent, scrub-shrub, and bottomland hardwood forest wetland condition and to prevent any use of the Property that will impair or interfere with the Conservation Values of the Property. Grantor intends that this Easement will confine the use of the Property to such activities as are not inconsistent with the purpose of this Easement.

2. Grantor’s Covenants. Grantor will make reasonable efforts to minimize dumping and trespassing on the Property and to assist Grantee in performing its responsibility of monitoring compliance with this Easement. Grantor may, but shall not be obligated to, install and maintain fencing and guard rails along the boundary of the Property in the event Grantor determines in its reasonable discretion that dumping and trespassing are not being sufficiently prevented at the Property. As of the date hereof, Grantor has proposed and Grantee has approved the fencing plan attached hereto as Exhibit C to be installed by Grantor to mark the boundary of the Property while permitting reasonable wildlife passage and human access to the Property for monitoring and other purposes contemplated by this Easement. Grantee has further approved

wire-woven fencing with wooden posts as depicted in that certain document captioned “RENAISSANCE ZONE SOUTH BUSINESS PARK - CONSERVATION EASEMENT - PROPOSED FENCING MATERIAL AND DETAILS” as the fence design, which document has been included in Grantee’s Baseline Documentation. Installation of fencing of different materials or design by Grantor shall be subject to the prior approval of the Grantee. Grantor shall maintain fence posts to assist Grantee in identifying boundaries and monitoring activities, but shall not be required to keep fencerows clear of vegetation.

3. Rights of Grantee.

(a) To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:

- (i) To preserve and protect the Conservation Values of Property;
- (ii) To enter upon the Property at reasonable times, at least once per year, in order to monitor compliance with and otherwise enforce the terms of this Easement; provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not in any case unreasonably interfere with Grantor’s use and quiet enjoyment of the Property;
- (iii) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use; and
- (iv) To erect signs, with the prior approval of Grantor, indicating that the Property is subject to a conservation easement.

(b) To facilitate the exercise of the foregoing rights Grantor grants to Grantee the appurtenant right of access, ingress and egress by easement over, on and through the easement labeled “Universal Way” on the Minor Plat and the appurtenant right of access, ingress and egress by easement from said Universal Way easement to the Property by that certain “20’x25’ Access Easement – Granted” as depicted on the Minor Plat Grantor reserves the right to relocate and alter the size of said access easements at any time, in its sole and absolute discretion; provided, however, such relocation and alteration shall not materially impair Grantee’s access to the Property as may be required to exercise Grantee’s rights as set forth in this Section 3.

(c) In addition to the foregoing, any and all development rights now or hereafter associated with the Property, including, without limitation, all rights, however designated, that may be used pursuant to applicable zoning laws, or other governmental laws or regulations, to compute permitted size, height, bulk, or number of structures,

development density, or any similar development variable on or pertaining to the Property or any other property, except those reserved under paragraph 5, are hereby conveyed to Grantee. The parties agree that the development rights so conveyed are hereby terminated and extinguished and may not be used on or transferred to any other property.

4. Prohibited Uses. Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, and in furtherance of the Easement herein granted, Grantor, its successors and assigns, agree to each of the following prohibitions, subject to the noted exceptions and limitations, which prohibitions contribute to the public purpose of significantly protecting and preserving the Property and protecting the Conservation Values:

- (a) The legal or *de facto* division, subdivision, or partitioning of the Property. Any transfer of the fee interest in the Property shall be of the entire Property as a single parcel;
- (b) Any agricultural, residential, commercial, or industrial use of or activity on the Property, except as expressly permitted in Section 5 of this Easement;
- (d) The placement, construction, or maintenance of any buildings, structures, or other improvements of any kind including, without limitation, fences, roads, parking lots, radio towers, towers for cellular telecommunications, and utility transmission lines and related facilities, above or below the ground, except as expressly permitted in Section 5 of this Easement or as permitted by Section 2 of this Easement;
- (e) Any alteration of the surface of the land, including, without limitation, filling, the excavation or removal of soil, sand, gravel, rock, peat, or sod without the prior written approval of Grantee, except as expressly permitted in Section 5 of this Easement or pursuant to any other easement of record on the Property, and except wetland restoration, creation, enhancement, and buffering activities pursuant to the Wetlands Permit or otherwise required by the Kentucky Division of Water (“KDOW”) and the USACE;
- (f) Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant depletion or pollution of any surface or subsurface waters, except for the discharge of storm water directly or through a conveyance from an adjacent property pursuant to any permit, license or approval issued by an appropriate local, state or federal governmental agency or in conformance with the Wetlands Permit or other a wetland restoration, creation and enhancement plan approved by KDOW and USACE;

- (g) The draining, filling, dredging, or diking of wetland areas, including any enlargement thereof, or the cultivation or other disturbance of the soil, except in conformance with the Wetlands Permit or other wetland restoration, creation, and enhancement plan approved by KDOW and USACE;
- (h) The alteration or manipulation of the ponds, water courses, and wells located on the Property, or the creation of new water impoundments, water courses, or wells, for any purpose, except in conformance with the Wetlands Permit or other wetland restoration, creation, and enhancement plan approved by KDOW and USACE;
- (i) The harvesting, destruction or removal of trees and other natural growth except as specifically permitted in Section 5 of this Easement;
- (j) The installation of underground storage tanks, or the processing, storage, dumping, or the disposal of wastes, trash, rubbish, vehicle bodies or parts, refuse, and debris on the Property;
- (k) The placement of any signs or billboards on the Property, except as expressly permitted in Section 5;
- (l) The construction of new roads, or the paving of any existing unpaved road or trail except as specifically permitted in Section 5 of this Easement;
- (m) The use of motorized recreational vehicles on the Property, including but not limited to snow mobiles and all-terrain vehicles;
- (n) Any hunting, fishing, or trapping of animals for sport or consumption (except trapping referenced in Section 5(a)(i) which is exclusively for scientific or educational purposes, and as set forth in Section 5(a)(viii); and
- (o) Any unanticipated activity or use of the Property which is inconsistent with the conservation purposes of this Easement which would impair significant Conservation Values is prohibited unless such use or activity is necessary for the protection of the Conservation Values that are the subject of this Easement, in which case such use or activity shall be subject to the prior approval of USACE or KDOW as provided in **Section 6** herein.

5. Reserved Rights.

- (a) **Grantor's Rights.** Grantor reserves to itself, and to its successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the Property that are not expressly prohibited

herein and are not inconsistent with the purposes of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

- (i) The right to engage in and permit others to engage in educational, research, and passive recreational uses of the Property, including, but not limited to, plant collection, small mammal trapping, reptile/amphibian/insect sampling, bird and bat mist netting, bird watching, installation of permanent study plot markers, installation of bat boxes, bird houses, and duck nest boxes or platforms, marking of access and hiking trails with flagging or forestry paint, planting of native wetland woody or herbaceous plant species to increase ecological diversity and wildlife habitat, and other educational activities causing no surface alteration of the land;
- (ii) The right to conduct soil evaluations and sampling and to install shallow groundwater monitoring wells to measure site hydrologic conditions;
- (iii) The right to maintain, renovate, and replace any structure permitted herein in its originally approved location, and the right to install, maintain, renovate, and replace structures that support the Conservation Values of the property;
- (iv) The right to selectively prune or cut trees on the Property, as necessary for fire prevention, thinning, elimination of diseased growth, control of invasive, non-native species, to control insects and disease, or to prevent personal injury or property damage, and if applicable, in accordance with best management practices recommended by the Kentucky Division of Forestry or successor agency;
- (v) The right to install signs, the placement, number, and design of which do not significantly diminish the scenic character of the Property for the following purposes: to state the name and address of the Property and the name of owners of the Property, to advertise the Property for sale or rent, to post the Property against trespass or otherwise to control unauthorized entry or use; and to give notice of the significance of the Property;
- (vi) The right to lease or grant other less-than-fee interests in the Property for any use permitted to the Grantor under this Easement, provided that such lease or other interest is consistent with and subject to the terms of this Easement;
- (vii) The right to take or allow any action, including maintenance, repair, renovation, or replacement of any structure or other facility, authorized pursuant to any existing easement, restriction or stipulation of record on the Property, and to grant utility, drainage or transportation-related easements, as approved by the USACE or KDOW, provided that no such easement shall materially impair the Conservation Values; and

(viii) Grantor reserves the right to develop and implement a wildlife management plan in consultation with Grantee, Commonwealth of Kentucky Department of Fish and Wildlife Resources, with other agencies of the Commonwealth of Kentucky and/or with environmental consultants to address animal population and habitat improvement if deemed necessary by Grantor, which plan may include trapping, fishing, and other lawful methods of controlling wildlife populations and overpopulation.

(b) **Acknowledgment of Certain Third Party Interests.** The parties hereto agree and acknowledge that the subject Property is part of an 800-acre development known as Louisville Renaissance Zone South Business Park (the “**Renaissance Zone South**” which is part of a 3000-acre Renaissance Zone), which Renaissance Zone South will accommodate, among other things, the expansion of United Parcel Service WorldPort Facility. The Renaissance Zone South is a commercial and industrial development, closely integrated with United Parcel Service operations at the Louisville International Airport. In the event that certain third parties, such as the Federal Aviation Administration, the Louisville Regional Airport Authority, or United Parcel Service or a subsidiary thereof, might reasonably benefit from uses of the Property in a way that would not adversely affect the Conservation Values or negatively impact the wetlands, Grantor may permit such uses on the Property, subject to the approval of USACE or KDOW, and subject to notice provided to Grantee. Nothing herein shall be construed to require Grantee’s approval of uses, improvements, or alterations made by Grantor or any third party mentioned in this Section 5(b) to property adjacent to but not located on the subject Property.

6. Notice and Approval.

(a) **Notice of Intention to Undertake Certain Permitted Actions.** The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities is to afford Grantee an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is not inconsistent with the purpose of this Easement. Whenever notice is required, Grantor shall use reasonable efforts to notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement. Grantor retains certain limited rights pursuant to the prohibitory clauses in Subsections 4(d), 4(e), 4(g), 4(h), 4(i), 4(l), and 4(o) above. When Grantor exercises such rights, Grantor shall use reasonable efforts to provide Grantee advanced notice of such activities as set forth in this Section 6(a). Grantor shall use reasonable efforts to provide notice to Grantee as set forth in this Section 6(a) in the event that Grantor undertakes or permits third parties to relocate or alter the access easement described in Section 3(b) or to undertake activities as described in Subsections 5(a)(i), 5(a)(iii), 5(a)(iv), 5(a)(v), 5(a)(vi), 5(a)(vii), or 5(a)(viii).

(b) **Grantee’s Approval.** Where Grantee’s approval is required under the terms of this Easement, the Jefferson County Environmental Trust Oversight Board, or successor organization, may act on behalf of Grantee. Approval shall be granted or withheld in writing

within thirty (30) days of receipt of Grantor's written request therefor. Approval may be withheld only upon a reasonable determination by Grantee or the Louisville/Jefferson County Environmental Trust Oversight Board that the action as proposed would be inconsistent with the purpose of this Easement. The failure of Grantee or the Louisville/Jefferson County Environmental Trust Oversight Board to respond within said period shall constitute the grant of permission by such Grantee with respect to the subject request. Grantee shall not unreasonably withhold its consent or permission, but shall be guided by the purposes of this Easement and the Conservation Values hereof as specified herein in rendering its decision. In the case of withholding of approval, Grantee shall notify Grantor in writing with reasonable specificity of the reasons for such denial, and the conditions, if any, on which approval might otherwise be given. A determination in at any time by USACE that a proposed action shall not adversely impact the Conservation Area shall be sufficient support for Grantee or the Louisville/Jefferson County Environmental Trust Oversight Board to approve the proposed action.

7. Grantee's Remedies.

(a) **Notice of Violation; Corrective Action.** If Grantee determines that a violation of the terms of this Easement by Grantor has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity by Grantor inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.

(b) **Injunctive Relief.** If Grantor fails to cure the violation within sixty (60) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a sixty (60) day period, fails to begin curing such violation within the sixty (60) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.

(c) **Damages.** Grantee shall be entitled to recover damages for violation of the terms of this Easement by Grantor or injury to any Conservation Values protected by this Easement by Grantor. Without limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

(d) **Emergency Enforcement.** If Grantee, in good faith, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this Section 7 without prior notice to Grantor or without waiting for the period provided for cure to expire.

(e) **Scope of Relief.** Grantee's rights under this Section 7 apply equally in the event of either actual or threatened violations of the terms of this Easement by Grantor. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement by Grantor are

inadequate and that Grantee shall be entitled to the injunctive relief described in paragraph 7(b), both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Section 7 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

(f) **Costs of Enforcement.** All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor; provided, however, that if Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs.

(e) **Forbearance.** Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

(f) **Waiver of Certain Defenses.** Grantor hereby waives any defense of laches, estoppel, or prescription.

(g) **Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including without limitation, fire, flood, storm, earth movement, or the unauthorized acts of third parties, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

8. Public Access. Grantor may allow public access to the Property at such times and in such a manner as is approved in writing by Grantee, for educational purposes. Nothing contained in this Easement grants, nor shall be interpreted to grant to the public any unfettered right to enter on the Property.

9. Costs, Liabilities, Taxes, and Environmental Compliance.

(a) **Costs, Legal Requirements, and Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Property free of any

liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

(b) **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively “taxes”), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

(c) **Representations and Warranties.** Grantor represents and warrants that, after reasonable investigation and to the best of its knowledge:

- (i) Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;
- (ii) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and
- (iii) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

(d) **Remediation.** If, at any time, there occurs, or has occurred, a release in, on, or about the Property by Grantor or its members, directors, officers, employees, agents or contractors, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required. Grantee shall be responsible for taking all steps necessary to assure the containment and remediation, including any required cleanup, of any such release caused by Grantee or its employees, agents, or contractors.

(e) **Control.** Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor’s activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended (“CERCLA”), and KRS 224.01-010 et seq.

(f) **Hold Harmless.** Grantor hereby releases and agrees to hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the successors, and assigns of each of them (collectively “Indemnified Parties”) from and against

any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, to the extent such injury, death or damage is a result of the negligent act or omission of Grantor related to the Property; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA and KRS 224.01-010 et seq., by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property at any time, except to the extent such violation or failure is caused by the negligence or intentional misconduct of any of the Indemnified Parties; and, (3) the obligations, covenants, representations, and warranties of paragraphs 9(a) through 9(d).

10. Extinguishment and Condemnation.

(a) **Extinguishment.** This Easement can only be terminated or extinguished, whether with respect to all or part of the Property, by judicial proceedings in a court of competent jurisdiction. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion of the Property (or any property received in connection with an exchange or involuntary conversion of the Property) after such termination or extinguishment, and after satisfaction of prior claims and any costs or expenses associated with such sale, and satisfaction of prior claims and costs or expenses whether agreed to by the parties hereto or ordered by a court of competent jurisdiction under Paragraph 7 of this Easement for violation of the terms hereof, Grantor shall retain any net proceeds resulting from such sale. Net proceeds shall also include, without limitation, net insurance proceeds.

(b) **Condemnation.** If all or any part of the Property is taken under the power of eminent domain by public, corporate or other authority so as to abrogate the restrictions imposed by this Easement, the Grantor is entitled to recover all of the proceeds of such taking, subject to the rights of a mortgagee or lender as set forth in Paragraph 17. Notwithstanding the foregoing to the contrary, Grantor shall cooperate and consult with Grantee in determining whether taking by eminent domain should be challenged in court, and whether it is appropriate to negotiate with any condemning authority for a transfer in lieu of condemnation. In the event Grantor and Grantee pursue negotiations with a condemning authority, Grantee reserves the right to obtain any reasonable settlement that will minimize negative impacts on and otherwise protect and enhance the Conservation Values, and will adequately compensate Grantee for any harm to the Conservation Values and/or costs and expenses incurred by Grantee as a result of such negotiations.

(c) **Change in Economic Conditions.** The fact that any use of the Property that is expressly prohibited by the terms of this Easement may become more economically valuable than uses permitted by the terms of this Easement, or that neighboring properties may, in the future, be put entirely to uses that are not permitted by the terms of this Easement, has been considered by Grantor in granting this Easement. Grantor believes that any such changes in the use of neighboring properties will increase the benefit to the public of the continuation of this

Easement, and Grantor and Grantee intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement pursuant to Paragraph 10(a). In addition, the inability of Grantor, its successor or assigns, to conduct or implement any or all of the uses permitted under the terms of this Easement, or the unprofitability of doing so, shall not impair the validity of the Easement or be considered grounds for its termination or extinguishment pursuant to Paragraph 10(a).

11. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement in writing, without notice to any other party; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code, and any amendment shall be consistent with the purpose of this Easement and shall not affect its perpetual duration. Any such amendment shall be recorded in the Office of the Clerk of Jefferson County, Kentucky.

12. Assignment. Grantor may assign all of any portion of its rights and obligations under this Easement. Grantee may assign all or any portion of its rights and obligations under this Easement only to an organization that is authorized to acquire and hold conservation easements under applicable laws of the Commonwealth of Kentucky or the laws of the United States. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to advance continue to be carried out. Grantee agrees to give written notice to Grantor of an assignment at least thirty (30) days prior to the date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

13. Subsequent Transfers. Grantor agrees to incorporate the terms of this Easement by reference in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

14. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor: LOUISVILLE RENAISSANCE ZONE CORPORATION
COMPANY
ADDRESS
CITY, STATE

To Grantee: Director
Louisville Metro Planning and Design Services
531 Court Place, Suite 900
Louisville, KY 40202

or to such other address as either party from time to time shall designate by written notice to the other. Mailed notices shall not be deemed given or served until three business days after the date of mailing thereof or if delivery is by nationwide commercial courier, service of notice shall be deemed given one business day after the date of delivery thereof to said courier. Rejection or refusal to accept, or inability to deliver because of changed addresses or because no notice of changed address was given, shall be deemed a receipt of such notice.

15. Recordation. Grantee shall record this instrument in timely fashion in the Office of the Clerk of Jefferson County, Kentucky, and may re-record it at any time as may be required to preserve its rights in this Easement.

16. Existing Liens. Grantor warrants that to the best of its knowledge and belief there are no liens or mortgages on the Property. Grantor shall immediately cause to be satisfied or released any lien or claim of lien that may hereafter come to exist against the Property which would have priority over any of the rights, title or interest hereunder of Grantee, provided however, Grantor may contest in good faith the assertion of any tax lien, mechanics' lien or other lien on the Property through any administrative or judicial remedies available to Grantor, but Grantor shall promptly satisfy any such lien finally adjudged to be valid.

17. Subordination of Mortgages. Grantor has the right to use the Property as collateral to secure the repayment of debt, provided that the right of the Grantee to enforce the terms, restrictions and covenants created under this Easement shall not be extinguished upon foreclosure of any mortgage or any publicly or privately placed lien, regardless of date. Upon request, Grantee agrees to subordinate its rights under this Easement to the valid claims of any future mortgage holders or beneficiaries of deed of trust to the proceeds of any sale, condemnation proceedings, or insurance involving the Property, or to the leases, rents, and profits thereof, and likewise to subordinate its rights under any lien that may be created by Grantee's exercise of any of its rights under this Easement after the date of such subordination; provided that any such mortgage or deed of trust shall remain subordinated and junior to the Easement to the extent necessary to permit Grantee to enforce the purposes of this Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of such mortgage holder or trust deed beneficiary; and provided further that, in the unlikely event this Easement is condemned under the circumstances described in Section 10, Grantee shall be entitled to compensation in accordance with the terms of Section 10. Grantee agrees to execute any documents required to effect a subordination pursuant to this paragraph.

18. Leases. Grantor warrants that there are currently no lease agreements (whether written, oral, for a fixed term or month-to-month) in effect conveying any interest in the Property for use or occupation by any person.

19. Grantee's Interest. Grantor acknowledges that upon execution and recording of this Easement, Grantee shall be immediately vested with a real property interest in the Property.

20. General Provisions.

(a) **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Kentucky.

(b) **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. The rule of construction resolving ambiguities against the drafting party shall not be employed in the interpretation of this Easement.

(c) **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with paragraph 11.

(e) **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(f) **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns, and shall continue as a servitude running in perpetuity with the Property. The terms "Grantor" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor and its successors and assigns, and the above-named Grantee and its successors and assigns.

(g) **Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(h) **Approval.** Whenever in this Easement Grantee's approval or consent is required, said approval or consent shall not be unreasonably withheld, delayed or denied.

(i) **Enforceability.** The invalidity of any applicable statute or any part thereof shall not affect the validity and enforceability of this Easement according to its terms, it being the intent of the parties to agree and to bind themselves, their respective successors and assigns in perpetuity to each term of this Easement whether this Easement be enforceable by reason of any statute, common law or private agreement either in existence now or at any time subsequent

hereto. This Easement may be re-recorded at any time by any person if the effect of such re-recording is to make more certain the enforcement of this Easement or any part thereof. The invalidity or unenforceability of any provision of this Easement shall not affect the validity or enforceability of any other provision of this Easement or any ancillary or supplementary agreement relating to the subject matter hereof.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF Grantor and Grantee have set their hands on the day and year first above written.

GRANTOR:
LOUISVILLE RENAISSANCE ZONE CORPORATION

By: _____

Printed Name: _____

Title: _____

Jefferson County Attorney

METROPOLITAN GOVERNMENT

BY: _____

Jerry E. Abramson, Mayor

COUNTY OF JEFFERSON)

of _____ this ____ day of _____, 2007.

My commission expires:_____

Kentucky

COMMONWEALTH OF KENTUCKY)
) SS.
COUNTY OF JEFFERSON)

Subscribed, sworn to, and acknowledged before me by Jerry E. Abramson, Mayor of Louisville/Jefferson County Metropolitan Government, this ____ day of _____, 2007.

My commission expires:_____

Notary Public, State at Large
Kentucky

This instrument prepared by:

Theresa Senninger
Assistant Jefferson County Attorney
531 Court Place, Suite 1001
Louisville, KY 40202
(502) 574-6333

Exhibit A
Legal Description

“Lot 3” shown on a Minor Subdivision Plat as approved as Case No. 8912 and recorded September 20, 2007, in Deed Book 9109, Page 352 in the Office of the County Clerk of Jefferson County, Kentucky.

Being a portion of the same property consolidated by Louisville Renaissance Zone Corporation by Instrument of Consolidation dated February 15, 2007, and recorded in Deed book 8986, Page 25 in the Office aforesaid.

Exhibit B
Map from Instrument to Record Minor Plat

Exhibit C
Fencing Plan